DAVID N. KELLEY
United States Attorney for the
Southern District of New York
By: ELIZABETH WOLSTEIN (EW-5194)
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Telephone: (212) 637-2743
Facsimile: (212) 637-2686

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASSOCIATED PRESS, Plaintiff,	:	**ANSWER**
- v.-	:	**ECF CASE**
	:	05 Civ. 3941 (JSR)
UNITED STATES DEPARTMENT OF DEFENSE, Defendant.	:	

Associated Press v. United States Department of Defense Doc. 6

Defendant the United States Department of Defense ("DOD" or "defendant"), by its attorney, David N. Kelley, United States Attorney for the Southern District of New York, answers the complaint of the Associated Press ("AP" or "plaintiff") upon information and belief as follows:

1. The first sentence of paragraph 1 of the complaint contains plaintiff's characterization of the nature of this action, to which no response is required. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 1 of the complaint.

2. Denies the allegations in paragraph 2 of the complaint, except admits that there are currently approximately 520 individuals being detained by the Department of Defense

at the Guantanamo Bay Naval Air Station, Cuba.

3. Denies the allegations in paragraph 3 of the complaint, except admits that the Department of Defense has established Combatant Status Review Tribunals (CSRTs), at which detainees at Guantanamo Bay may contest their classification as enemy combatants, and admits that to date, CSRTs have determined that 38 detainees no longer meet the criteria to be classified as enemy combatants.

4. Denies the allegations in paragraph 4 of the complaint, except admits that DOD received a FOIA request from AP dated November 4, 2004, and respectfully refers the Court to AP's November 4, 2004 FOIA request for a true and accurate statement of its contents.

5. Denies the allegations in paragraph 5 of the complaint, except admits that DOD granted expedited processing of AP's FOIA request, and states that no response is required to the allegations in paragraph 5 concerning the relief AP seeks in this lawsuit.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the complaint.

7. Admits the allegations in the first sentence of paragraph 7 of the complaint. States that the second sentence of paragraph 7 asserts a conclusion of law, to which no response is required.

8. Paragraph 8 of the complaint contains plaintiff's allegations concerning jurisdiction, to which no response is required.

9. Paragraph 9 of the complaint contains plaintiff's allegations concerning venue, to which no response is required.

10. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations in paragraph 10 of the complaint.

11. Admits the allegations in the first sentence of paragraph 11 of the complaint. Neither admits nor denies the allegations in the second sentence of paragraph 11 of the complaint, but respectfully refers the Court to the decisions in Rasul v. Bush, 124 S. Ct. 2686 (2004), and Hamdi v. Rumsfeld, 124 S. Ct. 2633 (2004), for a true and accurate statement of their contents.

12. Denies the allegations in paragraph 12 of the complaint, except admits that on July 7, 2004, the Department of Defense announced the formation of the Combatant Status Review Tribunal.

13. Denies the allegations in paragraph 13 of the complaint, except admits that from August 2004 through January 2005, approximately five-hundred fifty-eight (558) tribunals convened, and that as a result of those proceedings, thirty-eight (38) detainees were determined to no longer meet the criteria to be classified as enemy combatants.

14. Neither admits nor denies the allegations in paragraph 14 of the complaint, but respectfully refers the Court to the decision in In re Guantanamo Detainee Cases, 355 F. Supp. 2d (D.D.C. 2005), for a true and accurate statement of its contents.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the complaint.

16. Denies the allegations in paragraph 16 of the complaint, except admits that AP submitted a FOIA request dated November 4, 2004 to DOD, and respectfully refers the Court to that request for a true and accurate statement of its contents.

17. Denies knowledge or information sufficient to form a belief as to the truth

of the allegations in paragraph 17 of the complaint, except admits that AP submitted a FOIA request to DOD, and respectfully refers the Court to that request for a true and accurate statement of its contents.

18. Neither admits nor denies the allegations in paragraph 18 of the complaint, but respectfully refers the Court to DOD's November 8, 2004 letter for a true and accurate statement of its contents.

19. Denies the allegations in paragraph 19 of the complaint, except admits that AP submitted to DOD a letter dated November 18, 2004, and respectfully refers the Court to that letter for a true and accurate statement of its contents.

20. Denies the allegations in the first two sentences of paragraph 20 of the complaint, except admits that as of February 10, 2005, DOD had not responded to AP's FOIA request. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence of paragraph 20, except admits that AP submitted to DOD a letter dated February 10, 2005, and respectfully refers the Court to that letter for a true and accurate statement of its contents. Neither admits nor denies the allegations in the fourth sentence of paragraph 20, but respectfully refers the Court to AP's February 10, 2005 letter for a true and accurate statement of its contents.

21. Neither admits nor denies the allegations in paragraph 21 of the complaint, but respectfully refers the Court to DOD's February 22, 2005 letter for a true and accurate statement of its contents.

22. Denies the allegations in paragraph 22 of the complaint, except admits that in a telephone conversation with AP's counsel on or about March 4, 2005, David Maier, the

action officer assigned to AP's administrative appeal, informed AP's counsel that DOD would respond to AP's FOIA request as quickly as the agency could.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 23 of the complaint. Denies the allegations in the second sentence of paragraph 23 of the complaint, except admits that in April 2005, AP's counsel contacted Mr. Maier concerning AP's FOIA request. Denies the allegations in the third sentence of paragraph 23 of the complaint, except admits that in a telephone conversation with AP's counsel on or about April 15, 2005, Mr. Maier informed AP that DOD had located and copied documents responsive to AP's FOIA request, and that the agency would be able to begin the process of reviewing and redacting those documents on or about April 20 at the earliest. Denies the allegations in the fourth sentence of paragraph 23 of the complaint, except admits that in the telephone conversation with AP's counsel on or about April 15, 2005, Mr. Maier did not provide a date by which AP might expect to receive responsive documents.

24. Denies the allegations in paragraph 24 of the complaint, except admits that as of April 19, 2005, the date on the complaint, more than 20 days had passed since February 10, 2005.

25. Paragraph 25 of the complaint asserts a conclusion of law, to which no response is required.

26. DOD repeats, realleges, and incorporates its responses to the allegations in paragraphs 1 through 25 of the complaint as though fully set forth in this paragraph.

27. Denies the allegations in paragraph 27 of the complaint.

28. DOD repeats, realleges, and incorporates its responses to the allegations in

paragraphs 1 through 27 of the complaint as though fully set forth in this paragraph.

29. Denies the allegations in paragraph 29 of the complaint.

30. The allegations in the unnumbered paragraph following paragraph 29 of the complaint and commencing with the word "WHEREFORE" state plaintiff's request for relief, to which no response is required. To the extent a response is required, denies that plaintiff is entitled to the requested relief, or to any relief whatsoever.

WHEREFORE, defendant demands judgment dismissing the complaint and granting such other and further relief as this Court deems just and proper, including costs and disbursements.

Dated: New York, New York
May 19, 2005

DAVID N. KELLEY
United States Attorney for the
Southern District of New York,
Attorney for Defendant

By: s/ Elizabeth Wolstein
ELIZABETH WOLSTEIN (EW-5194)
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Telephone: (212) 637-2743
Facsimile: (212) 637-2686

TO: DAVID A SCHULTZ, ESQ.
Levine Sullivan Koch & Schultz, LLP
230 Park Avenue, Suite 1160
New York, New York 10169

Attorneys for Plaintiff